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From:

Sent: Thursday, May 06, 2010 5:31:02 PM

To:

Cc:

Subject: RE: FTC OFL Recapture

Confirming my telephone advice, the statute does not specifically address how to apply the overall foreign loss (OFL) recapture rules of section 904(f)(1) to the section 904(d) separate category limitations. The consistent IRS position for post-1986 years, as reflected in instructions to Form 1118 and BNA computational software, followed the position articulated in the 1986 Act committee reports and Bluebook and reflected in temporary regulations at Treas. Reg. 1.904(f)-2T(c)(1) published in 2007, which is to recapture up to 100% of the foreign source income in any separate category with an OFL recapture account, to the extent of 50% of the total amount of foreign source income in all categories for the year. The 1987 regulations under section 904(f), which provided at Treas. Reg. 1.904(f)-2(c)(1) prior to amendment in 2007 that recapture is limited to 50% of the foreign source income for the year in each separate category with an OFL recapture account, did not apply by their terms to OFLs sustained in post-1986 years. See Treas. Reg. 1.904(f)-1(a)(1) and (c)(1). [REDACTED]

[REDACTED]

Please call if you have further questions.